APPEAL NO. 93050

A contested case hearing was held in (city), Texas, on December 14, 1992, (hearing officer) presiding as hearing officer. She determined the appellant (claimant) did not suffer a compensable injury on (date of injury), or at any other time while in the employ of the employer and does not have disability. Accordingly, benefits were denied under the Texas Workers' Compensation Act, TEX. REV. CIV. STAT. ANN., art 8308-1.01 *et seq* (Vernon Supp. 1993) (1989 Act). Claimant specifically objects to one of the hearing officer's findings, several of her conclusions of law and to the entirety of her decision and order and urges that the great weight of the evidence supports a conclusion that she, the claimant, suffered an injury in the course and scope. Respondent (carrier) argues that the claimant has not met her burden of establishing a compensable injury and asks that the hearing officer's decision be affirmed.

DECISION

Finding sufficient evidence to support the hearing officer's decision in this case, we affirm.

As agreed at the outset of the hearing, the issues before the hearing officer were whether claimant sustained an injury within the course and scope of her employment, and if so, whether claimant sustained any period of disability. The evidentiary matter coming before the hearing officer is set forth fairly and adequately in her Decision and Order and is adopted herein. Succinctly, claimant was a production worker with (employer) and had been employed for about a year and four months. She worked around chemicals in making diagnostic materials. She testified that on (date of injury) she was working with a substance called SPE in a lab with approximately six coworkers. She did not feel the room was particularly well ventilated and that the smell in the lab gave her a headache, accompanied by nausea which became worse as her shift progressed. She left the lab and come back shortly and states that an employee sprayed some cleaning chemical (identified as isopropyl alcohol which is like rubbing alcohol) at which time she got worse, became dizzy and subsequently had some type of seizure and lost consciousness. She was taken to the hospital and released the following day and went to work because she thought she would be terminated if she did not report to work. Claimant also testified that she did not have headaches, nausea, or sinus problems before May 1st, and that other employees had previously become ill working with SPE. There was no evidence that anyone else became ill on (date of injury). She states she was not able to work full shifts because of the headaches and that she went to a (Dr. D) on May 14th and was put into the hospital the following day with complaints of headaches and abdominal pain from fume inhalation. During her course of stay in the hospital (from the 15th to the end of May) an ovarian cyst was diagnosed, she underwent an exploratory procedure and subsequently had surgery and was placed on 6 weeks "recuperation leave." The claimant apparently went back to work in July and has worked up to the present although she indicated she still has some intermittent problems with headaches. Dr. D in his assessment upon the admission of the claimant in the hospital lists the following: (1) headaches; (2) sinusitis probably aggrevated

(sic) by chemical fumes; (3) rule out seizure disorder; (4) loss of consciousness; (5) spasm of trapezium; (6) neck pain; and (7) pelvic inflammatory disease. Dr. D indicated in an August 5, 1992 statement that the claimant "suffers from headaches which are aggravated by toxic fume inhalation."

The claimant, represented by counsel, introduced a ream of records indicated as medical records pertaining to the claimant. These were not indexed or sorted in any manner nor was there any indication of which ones the claimant thought particularly pertinent to establishing the claim. Indeed, there are many duplicates and even triplicates of records in the various packets, some are not decipherable and others are of such poor quality they cannot be read. In one packet, there are nearly 40 pages of innumerable compounds which do not shed any light on their relevance to the hearing. This practice is to be discouraged as it is a waste of valuable time and resources and does nothing in helping to resolve the issues. We have previously indicated this detracts from the dispute resolution process. *See* Texas Workers' Compensation Commission Appeal No. 93032, decided February 26, 1993.

The supervisor and shift coordinator testified that neither the claimant nor any other employee had complained of a chemically induced illness prior to (date of injury) and that all production workers used the same chemical mixes with variance in the quantity. She also indicated that although the claimant did not appear to be ill when she came to work on (date of injury), she subsequently became very ill and had what appeared to be a seizure. She testified that when the claimant came back to work she indicated her doctor had restricted her from mopping and that she did perform other details for awhile. The supervisor also stated that the claimant has used SPE since returning to work in July 1992, but has not complained of any symptoms associated with the use of this mix.

The employer safety manager testified and stated that the ventilation system was put in in late 1989 or early 1990 to comply with OSHA, EPA and other government requirements. He stated that he periodically tests the air quality and that it well exceeds the required standards. He stated that the only chemical contained in the SPE mix which would cause a reaction is sodium azide and when mixed with liquid can cause headaches. He said the ventilation system is such that production workers do not come into significant contact with sodium azide. He identified the smell that the claimant apparently came into contact with on (date of injury) as "agar" which is processed seaweed and that there is no requirement to test the environment for this substance and it does not produce any adverse effects.

A consultation report secured by the carrier from Dr C dated "12/8/92," whose letterhead indicates his specialty in medical and clinical toxicology, states that the hospital records on the claimant were reviewed together with the monitoring for various substances in the work place and provides the following:

CONCLUSION:

In reasonable medical probability, the ongoing symptom manifest by this patient are unrelated to workplace exposure to chemicals. Exposure to sodium azide is not supported by monitoring performed in the workplace. Further, if exposure to sodium azide had occurred, symptoms resulting therefrom would resolve within a period of a few days at the very longest. Since sodium azide resembles cyanide in terms of its effects, they would be clearly expected to result only in acute symptoms, with no long term effects to be expected. Sodium azide also resembles sodium nitroprusside, a therapeutic agent which is used to control malignant hypertension and can result in transient hypotension with no long term effects beyond a few hours.

With regard to isopropyl alcohol, there is no mechanism by which exposure to this substance could, in reasonable medical probability, induce this patient's symptoms either acutely or ongoing over a period of months.

The hospitalization of this patient in May of 1992 appears to have been primarily treatment of her pelvic inflammatory disease and an ovarian mass, with her ongoing complaints of headache resulting in evaluations yielding no abnormal physical findings.

The diagnosis by the patient's attending physicians that her symptoms are related to "toxic substances" were entertained in the absence of information concerning the mode of action of substances for which there appears to have been potential for exposure. This diagnosis is based primarily on the patient's chief complaint rather than rational assessment of toxicity of potentially available toxic substances.

Neither sodium azide nor isopropyl alcohol poses any possibility of induction of a clinical sequence of events manifest by this patient.

The finding and conclusions with which the claimant takes exception are:

FINDINGS OF FACT

7.The symptoms which the claimant has suffered since (date of injury) were not caused by claimant's exposure to any toxic substance in her work place.

CONCLUSIONS OF LAW

3.Claimant did not suffer a compensable injury on (date of injury), or at any other time, while in the employ of employer.

4.Claimant does not have disability.

5.Claimant's injury is not compensable under the Texas Workers' Compensation Act.

A claimant, in establishing an entitlement workers' compensation benefits, has the burden of proving, by a preponderance of the evidence, that there is a causal linkage between the injury and her employment. Martinez v Travelers Insurance Co., 543 S.W.2d 911 (Tex. Civ. App.-Waco 1976, no writ); Parker v. Employers Mutual Liability Insurance Co. of Wisconsin, 440 S.W.2d 43 (Tex. 1969); Reed v. Aetna Casualty & Surety Co., 535 S.W.2d 377 (Tex. Civ. App.- Beaumont 1976, writ ref'd n.r.e.). Where, as is the situation in this case, there is conflicting testimony and evidence, it is the responsibility of the hearing officer, as fact finder, to resolve any conflicts and inconsistencies. Garza v. Commercial Insurance Co.of Newark N.J., 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). The hearing officer can believe all, part or none of the testimony of any witness (Cobb V. Dunlap, 656 S.W.2d 550 (Tex. App.-Corpus Christi 1983, writ ref'd n.r.e.), and the testimony of an interested witness such as a claimant only presents a question of fact for the hearing officer's resolution. Highlands Insurance Company v. Baugh, 605 S.W.2d 314 (Tex. Civ. App.-Eastland 1980, no writ); Escamilla v. Liberty Mutual Insurance Co., 499 S.W.2d 758 (Tex. Civ. App.-Amarillo 1973, no writ). A fact finder can consider and give weight to the opinion of an expert and where there is any conflict between expert opinions, it presents a factual matter for his or her determination in weighing the evidence. *See* Atkinson V. U.S. Fidelity Guaranty Co., 235 S.W.2d 509 (Tex. Civ. App.-San Antonio 1950, writ ref'd n.r.e.).

The hearing officer is the sole judge of the relevance and materiality of the evidence and of the weight and credibility to be given the evidence. Article 8308-6.34(e). Where there is sufficient evidence to support his or her findings and conclusions, there is no sound basis to disturb the decision. Texas Workers' Compensation Commission Appeal No. 92232, decided July 20, 1992. We do not find the hearing officer's determinations to be so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust and, accordingly, find no basis to grant the relief requested by the claimant in this request for review. *See* In re King's Estate, 244 S.W.2d 660 (Tex. 1951). While the illness suffered by the claimant on (date of injury) may not be fully or, for that matter, satisfactorily explained in the evidence before the hearing officer, she could consider the matter that the claimant worked in the same or similar conditions for a significant period of time before the incident of May 1st without adverse effects and that although there were other employees in the same environment at the time, no one else displayed any signs of illness or effects from fume inhalation. The hearing officer could also consider the testimony of the safety manager and the supervisor concerning the working conditions, the ventilation system, and the environment being well within governmental requirements.

And, the hearing officer could give weight to the statement of the toxicology expert which, after reviewing the medical and hospital records concerning the claimant and the work place monitoring information, opined, in essence, that fume inhalation at the job site did not cause the claimants illness on (date of injury).

As indicated, there was sufficient evidence before the hearing officer to support her findings and conclusions. The decision and order are affirmed.

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Stark O. Sanders, Jr.
Chief Appeals Judge

CONCUR:

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Joe Sebesta
Appeals Judge

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Robert W. Potts
Appeals Judge